

APPEAL NO. 031850
FILED SEPTEMBER 2, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 18, 2003. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) sustained a compensable injury on _____; that the claimant's compensable injury includes aggravation of preexisting conditions of disc bulges or herniations, spondylosis, and degenerative changes in her low back and neck; that the claimant had disability from February 15, 2002, through January 14, 2003; and that the respondent/cross-appellant (carrier) did not meet the requirements of Section 409.021(d) to reopen the issue of compensability. The claimant appeals the hearing officer's disability determination, contending that she had disability after January 14, 2003, and asserts that the hearing officer erred in overruling her objection to the telephonic testimony of the carrier's required medical examination (RME) doctor. The carrier appeals the hearing officer's determinations that the claimant sustained a compensable injury; that the compensable injury includes aggravation of preexisting conditions of disc bulges or herniations, spondylosis, and degenerative changes in the claimant's low back and neck; and that it did not meet the requirements of Section 409.021(d) to reopen the issue of compensability. The carrier filed a response to the claimant's appeal. No response from the claimant to the carrier's appeal was received.

DECISION

Affirmed.

The issues of compensable injury, extent of the compensable injury, and disability presented fact questions for the hearing officer to resolve from the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations on the issues of compensable injury, extent of the compensable injury, and disability are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

With regard to the issue of whether the carrier can reopen the issue of compensability based on newly discovered evidence that could not reasonably have been discovered earlier, the evidence reflects that the carrier initially certified that benefits would be paid on the day it first received written notice of the claimed injury, and that approximately one year later, it disputed compensability based on a motor vehicle accident (MVA) that occurred in 1999. The hearing officer found that the carrier could reasonably have discovered the evidence regarding the MVA at an earlier date in

order to have timely filed a dispute of the claim. The hearing officer concluded that the carrier did not meet the requirements of Section 409.021(d) to reopen the issue of compensability. We conclude that the hearing officer's determination on this issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

The hearing officer overruled the claimant's objection to allowing the carrier's RME doctor to testify by speaker telephone. The record reflects that the carrier's RME doctor was sworn in and that the claimant was given the opportunity to cross-examine the doctor. The Appeals Panel has ruled that it is not error to allow testimony by speaker telephone. Texas Workers' Compensation Commission Appeal No. 92217, decided July 13, 1992; and Texas Workers' Compensation Commission Appeal No. 960954, decided July 2, 1996. Consequently, we do not find that the hearing officer erred in allowing the carrier's RME doctor to testify by speaker telephone.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **LUMBERMEN'S MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge